

V

In any event the testimony presented by both respondent and appellant revealed that the asbestos removal work was designed and executed in a manner which meets relevant standards and good construction business practices

VI

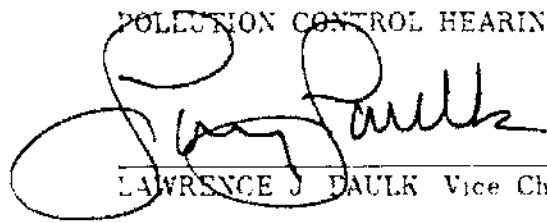
Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such From these Conclusions the Board enters this

ORDER

The subject notice of violation and \$250 penalty issued by the Benton Franklin-Walla Walla Counties Air Pollution Control Authority is vacated

DATED this 1st day of August 1984

POLLUTION CONTROL HEARINGS BOARD

 8/1/84
LAWRENCE J. DAULK Vice Chairman


GAYLE ROTHROCK Chairman

1 Title 10. Code of Federal Regulations, part 61 (M)(146) provides in relevant part

2 Each owner or operator to which this section applies shall (a)
3 provide the administrator (EPA) with written notice of intention to
4 demolish or renovate (1) at least 10 days (2) 20 days (3) or as soon
5 as possible

6 These notification alternatives depend on the amount of asbestos to be removed

7 II

8 Pursuant to legislative authority, the respondent has the power to enforce and operate under
9 chapter 173-400-075(1) of the Washington Administrative Code which provides

10 The emission standards for asbestos, beryllium, beryllium rocket motor
11 firing, mercury and vinyl chloride promulgated by the United States
12 Environmental Protection Agency prior to January 1, 1983, as contained in
13 Title 40 CFR Part 61, are by this reference adopted and incorporated
14 herein

15 III

16 Respondent agency has the burden of proof in air pollution penalty matters which come to
17 the Board on appeal

18 IV

19 The Board believes it is unclear from the evidence presented whether intergovernmental
20 notification in the autumn of 1983 and spring of 1984 should have resulted in actual notice of
21 proposed asbestos removal. If the mutual cooperation for notice was working well, as it should
22 under current agreements, respondent should have been notified of appellant's proposed actions.
23 Appellant notified EPA in accordance with the regulations, notified Labor and Industries in attempt
24 to comply with OSHA regulation, and got authorization and approval from the local landfill.

25 The Board concludes that respondent did not carry the burden of proof on the purported
26 violation of its regulations

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
PCHB No. 84-112

V

1
2 An Asbestos Disposal Form indicating Central Painting Inc would dispose of asbestos in
3 plastic bags at the Walla Walla city land fill was signed by the landfill owner on April 23 1984
4 At sometime then or later the expected quantity of asbestos---3 to 3 1/2 tons---was entered on the
5 form

VI

6
7 Subsequently as a result of notification by the telephone company respondent contacted
8 appellant and asked to be notified and found that no BFWWCAPCA permits had been issued for the
9 asbestos removal operation On May 4, 1984, appellant contacted respondent by mail

VII

10
11 By letter dated May 11 1984 respondent agency's control officer issued a notice of
12 violation and \$250 civil penalty for violation of Section 173 400 075 of Washington Administrative
13 Code On June 1 1984, appellant, as requested completed a Notice of Intent to Demolish with
14 information about the asbestos removal and disposal On June 7, 1984 this Board received
15 appellants appeal of that penalty

VIII

16
17 And Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such
18 From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

19
20
21 The Legislature of the State of Washington has enacted the following policy regarding
22 cooperation with the Federal government, which reads in relevant part

23 It is the policy of the state to cooperate with the federal government in
24 order to insure the coordination of the provisions of the federal and state
clean air acts (RCW 70 94 510)

25
26 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
PCHB No. 84-112

1 listened to the tape of the proceeding and reviewed the record

2 Witnesses were sworn and testified Exhibits were examined From the testimony heard and
3 exhibits reviewed, the Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent, pursuant to RCW 43 21B 260, has previously filed with this Board a certified
7 copy of its Regulation 80-7 which is noticed

8 II

9 On September 22, 1983, appellants wrote a letter to the Department of Labor and Industries
10 headquarters offices in Olympia pursuant to the Washington Industrial Safety and Health Act
11 advising them of the locations where they would be removing asbestos from various U S Post
12 Offices They asked if more precise construction activity times were required No response was
13 received to this letter

14 III

15 On October 12, 1983, appellants wrote a letter to the Seattle Regional Office of the
16 Environmental Protection Agency to advise them that appellant would be removing and disposing of
17 asbestos from a number of U S Post Offices throughout the state No response was received to
18 this letter

19 IV

20 Beginning April 5, 1984, appellant removed asbestos from the Walla Walla Post Office
21 without prior notification inspection and procedural approval of respondent BFWWCAPCA Appellant
22 testified that full safety and security was provided for by completely enclosing the room which
23 contained the asbestos, setting up three decontamination areas, removing the asbestos and putting it
24 into double burial bags inside the enclosed area, and then transporting the material to an approved
25 disposal site

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 84-112

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
CENTRAL PAINTING INC

Appellant

BENTON-FRANKLIN-WALLA WALLA
COUNTIES AIR POLLUTION
CONTROL AUTHORITY

Respondent

PCHB NO 84-112

FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

This matter the appeal of a notice of violation and civil penalty of \$250 for removing asbestos from a structure without prior notification and approval, came on for hearing before the Pollution Control Hearings Board, Lawrence J. Faulk, Vice Chairman and presiding on July 20, 1984 at Lacey, Washington.

Appellant Richard Basquette of Central Painting, Inc. appeared and represented his company. Respondent Benton-Franklin-Walla Walla Counties Air Pollution Control Authority (BFWWCAPCA) was represented by J. Philip Cuoque, Control Officer. The proceedings were recorded electronically and officially reported by Kim Otis of Gene Barker and Associates. Gayle Rothrock, Chairman, has